

Filed 5/8/19 In re Ella J. CA2/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re ELLA J. et al.,

Persons Coming Under the
Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

STEVEN J.,

Defendant and Appellant.

B290245

(Los Angeles County
Super. Ct. No. DK23285)

APPEAL from an order of the Superior Court of Los Angeles County, Frank J. Menetrez, Judge. Affirmed.

Emery El Habiby, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Jeanette Cauble, Principal
Deputy County Counsel, for Plaintiff and Respondent.

Steven J. (Father) appeals from a permanent restraining order issued for the protection of his wife, Lisa J. (Mother), and his two minor children, 12-year-old Ella J. and 10-year-old Dominick J. He contends the juvenile court abused its discretion in issuing the order. We affirm.

BACKGROUND

I. Events Leading up to the Filing of a Petition Under Welfare and Institutions Code Section 300¹

Father, Mother, Ella, and Dominick lived in the paternal grandmother's home. On April 25, 2017, the Department of Children and Family Services (DCFS) received a referral based on allegations of emotional abuse. Father arrived at Dominick's baseball practice intoxicated. He was disruptive and the coaches asked him to leave. The police were called but did not arrest Father. They noted that Dominick was aware of Father's alcohol abuse problem. DCFS closed the matter, finding the allegations inconclusive. It noted "[t]he family has had significant stressors including [F]ather's stroke and financial problems that led to an eviction and residing with [the paternal grandmother]. Father

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

has resorted to alcohol as a coping mechanism, and [M]other has considered divorce. Father admitted the drinking problem and accepted referrals for treatment programs Father agreed to drug test but missed two scheduled dates. He finally tested on [May 18, 2017] and tested positive for alcohol at 0.09 [percent]. Father agreed to not drive the children with any alcohol levels.” He also reported that he started a program. Additionally, Father and Mother attended marital therapy with Dr. Jennifer Ramlo.

From May 14 through May 29, 2017, the police were called to the paternal grandmother’s home six times due to allegations of domestic abuse, all of which occurred after Father had been drinking. On May 25, Father had been drinking and was involved in a dispute with Ella. Father had hidden her iPad, she found it, and Father tried to take it away from her. During the struggle, he scratched her arm. On May 29, Father then apparently drunk, accused Mother of having an affair, and forcibly grabbed Mother’s breasts and genitals. She attempted to call 911, but Father ripped the phone cord out of the wall. After he fell asleep, Mother called 911. The children witnessed this incident.

On May 31, 2017, a Children’s Social Worker (CSW) made an unannounced visit to the home. Mother denied that Father scratched Ella when he grabbed the iPad from her. Mother said Father was fixated on the idea that she was having an affair. This was “all part of the drinking. The bottom line is that he needs help for drinking.” Mother acknowledged that Father grabbed her but said there were no bruises and the children were in the other room and did not witness the incident. Mother said she did not want a restraining order; she thought the May 29

incident “woke him up. He hasn’t had a drink since then [and Mother] watched him pour a bottle of wine down the drain.”

The CSW spoke to Father several days later. As to the incident with Ella, Father explained that he took the iPad from Ella because she was being disrespectful; he did not scratch her and was not drunk. As to the incident with Mother, Father denied being drunk, grabbing Mother, or pulling the phone cord out of the wall. On June 2, Father tested negative for drugs and alcohol. He told the CSW he had not had a drink since May 28, and he would start attending Alcoholics Anonymous (AA) meetings that week.

The CSW subsequently interviewed Ella and Dominick. Ella denied that Father scratched her, explaining the police might have seen an old scratch from her watch. Both children said they felt safe and were not afraid of anyone in the home.

Father emailed the CSW on June 9, 2017, setting out his plan for therapy, a domestic violence program, AA, couples therapy, and an alcohol rehabilitation program. He also planned to move out of the paternal grandmother’s home within 30 to 45 days.

The CSW interviewed Dr. Ramlo on June 15, 2017. She explained that she had been seeing Father for about three years. He had problems with his business and began drinking. Then they lost their house. The family had financial problems, but Father seemed “paralyzed about looking for work.” He also was obsessed with the idea that Mother was having an affair, following her around and checking her phone rather than looking for work. Mother was considering separation for these reasons.

DCFS detained the children from Father on June 20, 2017. They remained with Mother at the paternal grandmother's home, and Father moved out of the home.

II. The Section 300 Petition

DCFS filed a section 300 petition on June 23, 2017, alleging under subdivisions (a) and (b)(1) that the children were at risk due to the parents' domestic violence and Father's alcohol abuse. At the detention hearing on that date, the juvenile court found a prima facie case for detention and ordered the children released to Mother. Father and Mother both denied the allegations of the petition. The court granted Father monitored visitation and gave DCFS discretion to allow the paternal grandmother to monitor visits in her home. The court ordered DCFS to provide family maintenance services and to provide Father with a referral for a substance abuse program.

In the July 24, 2017 jurisdiction/disposition report, DCFS reported that a Dependency Investigator (DI) attempted to interview Father, but he said he was considering hiring a private attorney and therefore would not speak to the DI. The DI interviewed Dr. Ramlo, who said she had not seen Father and Mother recently, because they still owed her money for past sessions. The doctor mentioned that Father had recently sent her an excessive number of text messages, some of which she considered to be irrational. Dr. Ramlo did not believe that Father would physically hurt the children. The doctor knew about the domestic violence between Father and Mother, and this concerned her. Dr. Ramlo was unsure if she would be able to continue seeing the family due to their outstanding balance owed.

The DI noted that neither Father nor Mother had enrolled in counseling or classes to address case issues. Father said he was attending AA and domestic violence classes, but he had not yet enrolled in an alcohol treatment program.

On August 17, 2017, DCFS filed a last minute information for the court indicating a change in recommendation. It noted that Mother denied any danger to the children due to domestic violence. She said that she only called the police in May 2017 in order to get Father to stop drinking. “Mother stated that [F]ather had had a stroke in August of 2016 and this led to a diagnosis of heart problems. Mother stated that [F]ather became depressed after this diagnosis and the famil[y’s] ensuing financial issues and began drinking to excess.” He “had never had a serious drinking problem prior to his medical and financial issues.” According to Mother, Father “is a very hands-on father and is very involved with the children’s day-to-day life.” Mother believed Father was now participating in AA meetings and anger management classes. Due to the parents’ minimization of the domestic violence problem, DCFS recommended that both Father and Mother participate in domestic violence counseling and individual counseling. Additionally, Father had not tested for alcohol since June 2. DCFS recommended that he test weekly and participate in an alcohol treatment program.

In a second last minute information for the court, DCFS indicated that the DI finally interviewed Father on August 9, 2017. Father denied any domestic violence, although he acknowledged arguing with Mother. He acknowledged an alcohol problem, but he denied caring for the children while intoxicated or drinking in their presence. Father said he was attending AA as often as two or three times a day, as well as domestic violence

and parenting classes. He provided documentation of his participation in a domestic violence treatment program, a letter from his AA sponsor, and counseling appointment forms.

At the August 17, 2017 hearing, Father and Mother entered no contest pleas to the petition. The juvenile court sustained the petition as amended under section 300, subdivision (b), based on Father's unresolved history of alcohol abuse. The court dismissed the counts based on domestic violence. It ordered DCFS to ensure that Father participated in alcohol testing weekly.

For the September 18, 2017 hearing, DCFS reported that Father was attending AA meetings on a regular basis. He and Mother had arranged to attend marriage counseling. Father had enrolled in a substance abuse education program on September 12. Father had four clean drug tests² in August and September, but he failed to test in July and missed one test in August. DCFS also noted that the paternal grandmother was suffering from cognitive difficulties, so DCFS sought to find someone else to monitor visitation.

At the hearing, over DCFS objection, the juvenile court ordered the children placed in the parents' home under DCFS supervision. The court ordered DCFS to provide family maintenance services.

In a status review dated March 1, 2018, DCFS reported a number of concerns, including that Father missed several drug tests, the most recent being one on February 21, 2018; Father had not enrolled in anger management or individual therapy; Father failed to document his participation in AA; and Father

² The drug tests included testing for alcohol.

reported that he had a relapse in October 2017. Additionally, the family had missed several family preservation appointments; Father and Mother limited the CSW's access to the home; and Father and Mother would not allow the CSW to interview the children privately. The CSW had observed Father confront Mother verbally during a home visit; Father demanded that he be present during all home visits and that the CSW obtain his permission before speaking to Mother. Further, Father and Mother were not taking the children to school, the doctor, or the dentist.

The CSW contacted the children's schools. Dominick had a large number of absences and tardies, and the school was "‘extremely concerned about his attendance.’" Ella also had a large number of absences and tardies; her grades were low and she was missing and/or struggling with her schoolwork. The school reported that "Ella's absences have been addressed with the parents more than once and the parents make excuses." On one occasion, "Ella didn't want to come into the office to be marked late and [F]ather yelled at the secretary because he felt that Ella was being singled out." The school bookkeeper described Father's behavior as harassing and said she did not want to deal with him anymore because he made her uncomfortable. A vice-principal said that if Father did not hear what he wanted to hear, he "flare[s] up," raising his voice.

The CSW spoke with Father's counselor on February 16, 2018. She said she was "‘really, really concerned.’" The family's home was very messy; Mother had given up trying to clean it because Father continued to make a mess. He used what were supposed to be parenting sessions to blame Mother for not doing things he felt she should do. The counselor stated that Father "is

not the same. He is doing weird things. [Mother] says that he has obsessive behaviors, patterns, consistent behaviors that he cannot disrupt. He has to have power and control[.]” Father was short-tempered, even with the counselor, in their sessions; he raised his voice and became confrontational toward Mother. The counselor was uncertain whether there was domestic violence between Father and Mother, but there was emotional abuse. She believed there was “‘something not right’ ” in Father’s brain.

Father, Mother, and the children continued to live in the paternal grandmother’s home, but the paternal grandmother no longer lived there. Father and Mother reported that the paternal uncles had come to the home and assaulted Father on two separate occasions. During the first of these incidents on February 17, 2018, one of the uncles had a gun and threatened to kill Father; he beat Father with the gun, and Father was taken to the hospital. The children were present during this incident and hid in their bedrooms. Father and Mother did not seek a restraining order, and the second assault occurred the following weekend.

The CSW spoke to Ella at her school on February 20, 2018. Ella said she did not see the assault on February 17, but she had heard a lot of arguing and loud talking. She said she felt safe in the home “‘sometimes.’ ” She felt that Father was drinking again because he was acting differently. He became distracted and it took him “‘forever to get things done.’ ” After speaking to Ella, the CSW spoke to the principal, who reported Father’s worsening behavior. Father was having problems with other parents and school staff. One teacher and her husband were considering taking out a restraining order due to Father’s harassment. A parent called the police when Mother and Ella

were at her home and Father came over; Father was drunk and “ ‘camped out’ ” in front of her house.

The CSW then went to the family’s home for an unannounced visit. She observed a rug with blood on it draped over a railing on the stairs. A pool of dried blood covered a portion of the top of the stairs and there was a trail of blood going down the stairs. There was blood on the door and doorknob. The CSW asked Mother what happened. Mother said, “ ‘I wasn’t here and you’re going to have to talk to [Father].’ ” She added that Father was not at home.

The CSW spoke to Dominick, who was home with a stomachache. He said he had heard a lot of arguing and locked himself in his room. When he exited his room, he saw Father bleeding; Father asked him to call 911. Dominick felt scared during the weekend. He no longer felt scared, because his uncle was in jail.

Father arrived home and tried to prevent the CSW from speaking privately to Dominick. As he was explaining what had happened, Mother agreed that Father had a concussion; Father questioned why she continually interrupted him. As he and Mother took the CSW on a walkthrough of the home, Father pointed to a closet and said, “ ‘[T]hat’s where we keep the guns.’ ” Mother said that Father did not have any guns, then Father denied that he had any guns. The CSW advised Father and Mother that she had spoken to Ella at school. They became upset. Father “stated that they are ‘not like the other meth head families’ CSW works with.”

DCFS obtained a removal warrant for the children “due to [F]ather’s ongoing substance abuse, domestic violence and failure to protect the children by [M]other and [F]ather.” DCFS further

indicated it would seek to remove the children from the parents' custody.

III. The Section 342 Subsequent Petition

DCFS filed a section 342 subsequent petition on March 5, 2018. This contained allegations that the children were at risk of serious physical harm, and the parents had failed to protect them. (§ 300, subds. (a), (b).) These allegations derived from the children's exposure to the violent altercations between Father and the paternal uncles. The petition also contained allegations that the children were at risk of harm due to Father's continuing alcohol abuse and failure to comply with court orders regarding drug testing, participation in AA, anger management, domestic violence education, and individual counseling.

The detention report noted that the children had been removed from the parents' home on March 1, 2018 with police assistance. The children were placed in a foster home.

The following day, the CSW spoke to Rebecca N., an extended family member, as a potential placement for the children. Rebecca N. said she would not be able to care for the children for more than a month. She expressed concern over Father's behavior. She had observed him to be controlling and to "lash out" at people. Mother made excuses for Father and defended him. Rebecca N. offered to let Mother and the children live with her.

Also on March 5, 2018, Mother filed a request for a permanent restraining order to keep Father away from her and the children. She explained that on February 17, Father kept her under surveillance and harassed her with phone calls and texts. When the paternal uncle came to the house, Father did not call

911 even though the children were in his care at the time. On February 20, the CSW “was speaking with Dominick inside [the] house. [Father] verbally abused [Mother] outside regarding [CSW] should not be able to speak to our son alone. [Father] blocked [Mother] from being able to enter back into the house as he continued to verbally abuse [her].” At other times, Father was verbally abusive, yelling and using vulgar language toward her, demeaning her.

The juvenile court issued a temporary restraining order on March 5, 2018. At a hearing on March 6, Father and Mother denied the allegations of the section 342 petition. The court found a prima facie case for detention. It ordered the children on an extended visit with Rebecca N. on the condition that Mother not reside in the N. family home. It ordered Father to stay away from the home.

IV. The Permanent Restraining Order

On March 14, 2018, DCFS filed a request for a walk-on, i.e., an unscheduled hearing. The CSW received an email from the principal of Ella’s school on March 9. The principal stated that Father “continues to ignore all directions DCFS, the court, and the school [are] giving him. He has sent repeated emails to me, has shown up at school twice, and has called our office to check in on Ella” Father demanded information, and begged the school to get Ella out of class so that Ella could call Father and her attorney to arrange for permission to attend Donuts with Dad. The principal was not comfortable with allowing Father to attend the event. The principal stated that Father has “exhibited an unstable and dangerous behavior in his calls and when he was

on campus.” She warned that if Father came to school for the event, she would call the police.

In a last minute information for the court, the CSW stated that she had a conversation with Rebecca N. earlier that day. Rebecca N. stated that Mother could not move into her home with the children, and she wanted the children out of the home by the end of the week. Rebecca N. was concerned about the safety of her own family due to Father’s conduct. She reported that Father called and texted her “numerous times, at all hours of the night, asking to speak to [M]other and indicating that [M]other ‘has his shoes’ and that he needs to see [M]other to get them.” Father sent Rebecca N. a video “where he filmed a neighbor’s child asking for Ella and Dominick to come home.”

Mother did not appear to have made any attempt to obtain a residence for herself and the children. Rebecca N. complained that Mother “does not help with the children when she has come to the home for visits.” DCFS had located a placement for the children and planned on moving them on March 16, 2018.

The CSW advised the court that Father’s “erratic and stalking-like behavior are making it difficult if not impossible to implement the order for monitored” visitation. In addition to his contact with Ella’s school, “Father also continues to make numerous calls to [the CSW] and text pictures of plate settings with food stating that breakfast is prepared and ready for the children’s return.” The CSW requested that visitation take place only in a therapeutic setting and the court order an Evidence Code section 730 evaluation for Father.

The juvenile court granted the walk-on request on March 9, 2018 and appointed an expert to evaluate Father on March 14. The court requested that the expert address whether Father had

a psychological impairment which would affect his ability to reunify with the children. The court also restricted visitation with Father to monitored visits at the DCFS office. The court admonished Father that he was not to have contact with the children outside of the ordered visitation. The court also ordered the children detained in shelter care under DCFS supervision.

In the March 19, 2018 status review report, DCFS reported that the counselor for the parents' parenting education program had recommended that Father and Mother not participate in the program together; their communication problems made it impossible for them to get through the sessions. In addition, Father had failed to provide documentation as to his participation in anger management and domestic violence programs.

On March 19, 2018, the juvenile court heard Mother's request for a permanent restraining order. Father's counsel requested that the court issue a six-month stay-away order, rather than a permanent restraining order. The children's counsel joined in Mother's request for a one-year permanent restraining order. The court found that evidence in the March 6, 2018 detention report supported the issuance of a permanent restraining order. The court issued the permanent restraining order.³ It also ordered that Father stay at least 100 yards from

³ The order expired on March 19, 2019. Although the order has expired, the appeal is not moot. The issuance of a permanent restraining order may have future consequences for Father, both in this and other proceedings. (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 209.)

the children's schools pending adjudication of the section 342 subsequent petition.⁴

DISCUSSION

Father contends the juvenile court abused its discretion in issuing a permanent restraining order, because there was no evidence he committed any abuse or harassment within the meaning of the Domestic Violence Prevention Act (DVPA; Fam. Code, § 6200 et seq.). We disagree.

I. Applicable Law and Standard of Review

Under section 213.5, subdivision (a), the juvenile court may issue a domestic violence restraining order in the manner provided by Family Code section 6300, which permits the court “to restrain any person for the purpose specified in [Family Code]

⁴ We take judicial notice of the juvenile court's April 26, 2018 minute order (Evid. Code, §§ 452, subd. (d), 459; *In re Alexandria P.* (2016) 1 Cal.App.5th 331, 342, fn. 7). Father and mother pleaded no contest to the allegations of the section 342 petition based on the incident in which the paternal uncle assaulted Father, and the parents did not obtain a restraining order or make an appropriate safety plan for the children. The court sustained the petition as amended.

We also take judicial notice of the March 7, 2019 family law custody minute order. At that time, the juvenile court terminated jurisdiction and awarded Mother legal and physical custody of the children. It ordered monitored visitation for Father based on Father's failure to make “enough progress to warrant unmonitored visitation, despite participating in his case plan, and repeatedly violat[ing] court orders.”

Section 6220, if an affidavit or testimony and any additional information provided to the court . . . shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse.” (Fam. Code, § 6300, subd. (a).)

For purposes of the DVPA, “ ‘abuse’ means any of the following:

“(1) To intentionally or recklessly cause or attempt to cause bodily injury.

“(2) Sexual assault.

“(3) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.

“(4) To engage in any behavior that has been or could be enjoined pursuant to [Family Code] Section 6320.” (Fam. Code, § 6203, subd. (a).) “Abuse is not limited to the actual infliction of physical injury or assault.” (*Id.*, subd. (b).)

Under Family Code section 6320, subdivision (a), conduct which may be enjoined includes “molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, . . . harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members.”

In reviewing the issuance of a permanent restraining order under section 213.5, subdivision (a), “ ‘we view the evidence in a light most favorable to the respondent, and indulge all legitimate and reasonable inferences to uphold the juvenile court’s determination. If there is substantial evidence supporting the

order, the court's issuance of the restraining order may not be disturbed.' ” (*In re Bruno M.* (2018) 28 Cal.App.5th 990, 996-997, quoting *In re Cassandra B.*, *supra*, 125 Cal.App.4th at pp. 210-211.)

II. Analysis

In arguing that there was no substantial evidence of abuse, Father asserts that the family was neither dysfunctional nor violent, it had just suffered from a number of unfortunate circumstances. Father points out that neither the original petition nor the subsequent petition was sustained on grounds of domestic violence; the allegations of domestic violence were dismissed. Mother never claimed she feared for her safety or that of the children until she filed the request for a restraining order. Finally, Father claims that the allegations of abuse were vague, conclusory, and unsupported by the evidence of Father's actual conduct.

First, as set forth above, “abuse” for purposes of the issuance of a restraining order need not include physical violence. (*Phillips v. Campbell* (2016) 2 Cal.App.5th 844, 852.) It may consist of stalking, harassing, telephoning, contacting, or disturbing the peace of the other party. (Fam. Code, § 6320, subd. (a).)

Second, we agree with Father that the record contains many vague, conclusory, and unsupported statements regarding Father and the nature of his conduct. Nonetheless, there is substantial evidence of abusive conduct.

On February 20, 2018,⁵ when the CSW was interviewing Dominick, Father arrived home and tried to prevent the CSW from speaking privately to Dominick. When Father was later speaking with the CSW, Mother added a comment and Father accused her of continually interrupting him. According to Mother, when Father arrived home and found that the CSW was speaking with Dominick, Father yelled at Mother for allowing it, using vulgar language, and blocked Mother's entrance to the house. The CSW spoke to Ella at her school. Ella felt that Father had resumed drinking because he was acting differently. She acknowledged that she did not always feel safe in the family's home.

After DCFS placed the children with Rebecca N., the court ordered Father to stay away from the home. According to Rebecca N., Father called and texted her "numerous times, at all hours of the night, asking to speak to [M]other." He also sent Rebecca N. a video "where he filmed a neighbor's child asking for Ella and Dominick to come home."

Father repeatedly sent emails to the principal of Ella's school, called the school, and went to the school twice, trying to contact Ella. Father made numerous calls to the CSW and texted

⁵ In determining whether substantial evidence supports the issuance of the permanent restraining order, we discuss only those incidents occurring around the time Mother filed her request and those occurring after the issuance of the temporary restraining order. DCFS discusses a number of incidents from 2017. Inasmuch as Mother remained with Father, gave no indication that she felt herself to be the victim of abuse, and did not mention those incidents in her request, we do not consider them as support for the issuance of the restraining order.

“pictures of plate settings with food stating that breakfast is prepared and ready for the children’s return.”

Father’s repeated attempts to contact Mother and the children through phone calls, text messages, and other means, in violation of court orders, constituted abuse under the DVPA. (*Perez v. Torres-Hernandez* (2016) 1 Cal.App.5th 389, 398-399.)

Additionally, it is reasonably inferable that Father’s yelling, using vulgar language and demeaning Mother in front of others destroyed Mother’s mental and emotional calm and constituted abuse under the DVPA. (*Phillips v. Campbell, supra*, 2 Cal.App.5th at p. 853.) Mother characterized this as verbal abuse and she requested that Father be ordered to complete the anger management program ordered by the court. Mother also indicated that the children overheard Father’s outbursts and were “suffering emotional abuse.”

Moreover, Father’s noncompliance with court-ordered programs, his continuing violation of court orders, and his alcohol relapse support an inference that he continued to pose a threat of abuse, necessitating the issuance of the restraining order. (See *In re Bruno M., supra*, 28 Cal.App.5th at p. 998.)

We conclude substantial evidence supports the issuance of the permanent restraining order. We therefore will not disturb the order. (*In re Bruno M., supra*, 28 Cal.App.5th at pp. 996-997; *In re Cassandra B., supra*, 125 Cal.App.4th at pp. 210-211.)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED

JOHNSON, Acting P. J.

We concur:

BENDIX, J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.